

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Diego A. Ashton,

Plaintiff,

vs.

Civil No.: 1:24-cv-00193

Christ Momale Moire and
Rhet Volk,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

[¶ 1] THIS MATTER comes before this Court on a Report and Recommendation filed by United States Magistrate Judge Clare R. Hochhalter on December 11, 2024. Doc. No. 10. After conducting an initial review of the complaint pursuant to 28 U.S.C. § 1915A and Local Rule 72.1(B)(5), Magistrate Judge Hochhalter recommends Plaintiff's claims against the Defendants under 42 U.S.C. § 1983 in their official capacity be dismissed.

[¶ 2] The Plaintiff filed an objection to the Recommendation to dismiss his claims against the Defendants in their official capacities, arguing qualified immunity does not apply in this case. Doc. No. 13. The recommendation to dismiss the official capacity claims was not grounded in qualified immunity. Rather, it was based on sovereign immunity because the Defendants are state employees and North Dakota has not waived its sovereign immunity for claims brought under 42 U.S.C. § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 66, 71 (1989) (holding the Eleventh Amendment bars claims brought under Section 1983 absent a waiver of sovereign immunity and that states and their agencies are not "persons" under Section 1983 and, thus, not amenable to suit); N.D.C.C. § 32-12.2-10 (preserving North Dakota's Eleventh Amendment immunity). Importantly,

however, the Report and Recommendation preserves the Plaintiff's claims against the Defendants in their individual capacities.

[¶ 3] Therefore, the Court has reviewed the Report and Recommendation and the entire record in this case, including the Plaintiff's Objection. The Court finds the Report and Recommendation persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety. The Plaintiff's claims against the Defendants in their official capacity are, therefore, **DISMISSED**.

[¶ 4] **IT IS SO ORDERED.**

Dated December 30, 2024.



Daniel M. Traynor, Judge
United States District Court